ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	MM Docket No. 92-195
	)	
Amendment of Section 73.202(b),	)	RM-7091
Table of Allotments,	)	RM-7146
FM Broadcast Stations.	)	RM-8123
(Beverly Hills, Chiefland, Holiday,	)	RM-8124
Micanopy, and Sarasota, Florida)	)	

TO: The Commission

APPLICATION FOR REVIEW

HARRY F. COLE

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Dickerson Broadcasting, Inc.

January 7, 1994

SUMMARY

The substitution of Channel 292C3 in Beverly Hills, one of the results of the above-captioned proceeding, was not the subject of reasonable and adequate notice as required by the Administrative Procedure Act and the Communications Act. The possibility that that particular channel might be allotted to Beverly Hills was never the subject of a notice of proposed rule making and was never published in the Federal Register, despite the fact that that proposed allotment would, under currently applicable rules, effect a significant adverse modification of the licenses of a number of stations, including Station WEAG-FM, Starke, Florida, of which the licensee is Dickerson Broadcasting, Inc.

Moreover, even if it could be said that the potential allotment of Channel 292C3 might somehow have been divined by Dickerson (and any other potentially affected licensee or permittee), there was no reason to believe that that potential allotment would be permitted. After all, that proposed allotment results in a serious short-spacing to Dickerson's Station WEAG-FM, and it is well-established that such short-spacings are not permitted in allotment situations. Nevertheless, the Bureau sidestepped this pesky problem by applying to the allotment -- which was first proposed in October, 1992 -- technical standards applicable only to proposals which had been filed prior to October 2, 1989. No valid basis exists for this completely arbitrary and capricious action.

Finally, the Bureau could and should have considered the adverse effects of its *de facto* waiver of the current technical rules vis-à-vis stations such as Station WEAG-FM, whether at the initial rule making stage or in response to Dickerson's Petition for Reconsideration. The Bureau's failure to do so warrants vacation of (at least) the Beverly Hills channel substitution and remand of this proceeding to the Bureau for further consideration.

TABLE OF CONTENTS

Pursuant to Section 1.115 of the Commission's Rules, Dickerson Broadcasting, Inc. ("Dickerson"), licensee of Station WEAG-FM, Starke, Florida, hereby seeks Commission review of the Mass Media Bureau's Report and Order ("*R&O*"), 8 FCC Rcd 2197 (1993), and Memorandum Opinion and Order ("*MO&O*"), DA 93-1364, released December 8, 1993, in the above-captioned proceeding. As set forth below, those decisions have, without reasonable and adequate notice as required by statute, severely and unfairly restricted the facilities of Station WEAG-FM inconsistently with the Commission's current technical standards.

QUESTIONS PRESENTED

1. Did not the Bureau fail to give Dickerson (and other similarly situated entities) reasonable and adequate notice that their authorizations would be effectively modified when the Bureau (a) adopted a channel allotment which had been proposed in October, 1992 and which had not been the subject of any Notice of Proposed Rule Making, and (b) then applied to that allotment technical standards which had not been in effect for more than three years?

2. Did not the Bureau err in declining to consider Dickerson's substantive arguments (in its Petition for Reconsideration) concerning the adverse impact, on the public, of the channel allotment scheme adopted herein?

FACTORS WHICH WARRANT COMMISSION CONSIDERATION

Commission consideration of this matter is warranted because it involves a policy which, as implemented, plainly fails to provide affected parties with adequate notice, as required by the Administrative Procedure Act ("APA"), and which, when implemented in this fashion, perforce leads to actions which are arbitrary and capricious, contrary to the APA.

BACKGROUND

1. On September 29, 1989, Heart of Citrus, Inc. ("Heart"), permittee of Station WXOF(FM), Beverly Hills, Florida, filed a petition for rule making proposing that its then-authorized channel, Channel 246A, be upgraded to Channel 246C3. That proposed change would not have had any impact whatsoever on Station WEAG-FM, which is authorized to operate on

Channel 292A.

2. On October 2, 1989 -- whether or not coincidentally, a mere three days after Heart's petition for rule making was filed -- new technical rules governing FM allotments went into effect. *See Second Report and Order* in *Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations* ("*Mileage Separation Order*"), 4 FCC Rcd 6375 (1989). The new rules provided for increased maximum facilities for Class A stations (from three kilowatts to six kilowatts), and established certain new mileage separations in light of that increase. According to the *Mileage Separation Order*, in all respects relevant to the instant case,

> the rules we are adopting will become effective on October 2, 1989. Applications and petitions filed prior to October 2, 1989 must comply with, and will be processed in accordance with, the current rules.

4 FCC Rcd at 6382, ¶57.

3. Heart's petition lay dormant for approximately three years. On September 8, 1992, the Chief, Allocations Branch released a Notice of Proposed Rule Making ("*NPRM*"), 7 FCC Rcd 5910 (Chief, Allocations Branch 1992), proposing the reclassification of Heart's channel from 246A to 246C3. Again, that proposed change would not have had any impact whatsoever on Station WEAG-FM, which is authorized to operate on Channel 292A. A summary of the *NPRM* (but not the full text) was published in the Federal Register, 57 FR 42537 (September 15, 1992).

4. In response to the *NPRM*, two counter-proposals were filed. In one, Heart itself proposed that Channel 246A be reclassified to Class C2 (rather than C3, as the *NPRM* had proposed pursuant to Heart's original suggestion). In the other, Sarasota-FM, Inc. ("Sarasota"), licensee of Station WSRZ(FM), Sarasota, Florida, and Gator Broadcasting Corporation ("Gator"), licensee of Station WRRX(FM), Micanopy, Florida, proposed a complicated series of channel substitutions and modifications, one result of which would be to substitute Channel 292C3 for Channel 246A in

Beverly Hills. [1/] While these counterproposals were reflected in a Commission Public Notice, Report No. 1918, Mimeo No. 30678, released November 20, 1992, they were not the subject of any notice in the Federal Register or any formal Notice of Proposed Rule Making, nor was any direct notice of these counterproposals provided to Dickerson.

5. In the *R&O* the Sarasota/Gator counterproposal was adopted and Channel 292C3 was allotted to Beverly Hills. The *R&O* acknowledged that the reference coordinates for that allotment would not provide the clearance to Station WEAG-FM required by the rules which had been in effect for three and one-half years up to that point. While ordinarily such short-spacing would justify rejection of a proposed allotment [2/], here the Allocations Branch simply said

> Because the petition for rule making which resulted in this allotment was filed prior to October 2, 1989, [Heart] may avail itself of the provisions of Section 73.213(c)(1) of the Rules with respect to Station WEAG, Channel 292A, Starke, Florida.

8 FCC Rcd at 2198, n.6. In other words, the extent of protection afforded to Station WEAG-FM by the rules adopted and in effect since 1989 was summarily and substantially reduced, effectively preventing Station WEAG-FM from taking advantage of any opportunity to increase its facilities from three kilowatts to six kilowatts, even though the proposal to allot Channel 292C3 to Beverly Hills was not submitted until October, 1992.

6. Dickerson petitioned for reconsideration of the Beverly Hills channel substitution, pointing out the clear lack of adequate notice and the equally clear adverse effects on the public. In the terse *MO&O*, the Chief, Policy and Rules Division, denied Dickerson's petition on essentially procedural grounds, without discussion of the relative public interest benefits which could flow from proper

---

[1/] Not surprisingly, other results of the Sarasota/Gator proposal would be the substantial upgrading of the facilities of both Sarasota's Station WSRZ(FM) and Gator's Station WRRX(FM). Sarasota/Gator had previously tried to bootstrap their way into upgrades by attempting to insinuate similar proposals in MM Docket No. 87-455. Those attempts (and a separate, contemporaneous, petition for rule making) had been rejected.

[2/] *See, e.g., Chester and Wedgefield, South Carolina*, 5 FCC Rcd 5572 (1990) ("Commission's policy is not to grant waivers of the spacing requirements in considering the allotment of a channel").

application of the Commission's ***currently effective*** rules

DISCUSSION

I. The Bureau Failed To Provide Adequate Notice Of Its Proposed Action As Required By The Administrative Procedure Act.

A. *The Commission Cannot Legitimately Rely On The Language Of Paragraph 3(c) Of The Appendix To The NPRM.*

7. With respect to Dickerson's argument that Dickerson had not been given adequate notice of the allotment ultimately adopted by the Bureau, the Bureau offered two responses in the *MO&O*. First, according to the Bureau, even though the *NPRM* made no reference at all to Channel 292 (whether as a Class A, a Class C3, or any other class) in Beverly Hills,

> in paragraph 3(c) of the Appendix to the [*NPRM*], we expressly alerted all potentially interested parties that "the filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved." A summary of the [*NPRM*] was published in the Federal Register on September 15, 1992, 57 FR 42537, thereby affording all interested parties notice of the proposed upgrade.

MO&O at 2, ¶4. This facile justification, however, misses the mark in a number of respects.

8. Section 4(b) of the APA requires the publication, in the Federal Register, of a notice of proposed rule making containing "either the terms or substance of the proposed rule or description of the subjects and issues involved." 5 U.S.C. §553(b)(3). The Commission must concede that the *NPRM* itself included no proposal whatsoever other than the possible reclassification of Channel 246A to Channel 246C3 in Beverly Hills. That proposal certainly did not provide any indication at all that a completely unrelated channel (say, Channel 292C3) might be allotted.

9. Of course, as the *MO&O* correctly points out, an appendix to the *NPRM* did contain some boilerplate language apparently designed to give the Commission the ostensible ability at least to claim that it had alerted potentially interested parties to some potential action, even if that potential action is nowhere described in any detail. The first trouble with that claim, though, is that that boilerplate

language in Appendix 3(c) was never published in the Federal Register. Instead, only a summary of the *NPRM* was published there, and that summary did ***not*** contain Appendix 3(c), or any reference to Appendix 3(c), or any suggestion that the *NPRM* might lead to any action other than that which was proposed therein, *i.e.*, the reclassification of Channel 246 in Beverly Hills. Absent the requisite Federal Register publication concerning any other possible rule changes, it cannot be said that the Commission has complied with the APA in this proceeding.

10. And even if the lack of Federal Register publication is disregarded for the sake of argument, there is a second, and more fundamental, problem with reliance on the boilerplate language from Appendix 3(c): that language provides no adequate notice of anything. The particular language, nestled comfortably in the fine print of Appendix 3(c) to the *NPRM*, states the "the filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved." But this language is functionally identical to similarly broad and non-specific language which has been specifically found ***not*** to provide the notice required by the APA. *See National Black Media Coalition v. FCC* ("*NBMC*"), 791 F.2d 1016, 1023 (2d Cir. 1986).

11. In *NBMC* the Commission had, through the rule making process, adopted a policy which had not been reflected in the initial notice of proposed rule making. That notice had, however, contained a statement that the proceeding might lead to the adoption of rules "substantially as proposed in [the notice] or in accordance with such variants, modifications, or alternatives within the scope of the issues of th[e] proceeding, as [the Commission] may find prefereable after considering the entire record." *Id.* This extraordinarily broad language was seemingly intended to serve the same purpose in that proceeding as the Appendix 3(c) language was here: the Commission wanted to reserve maximum flexibility to do whatever it felt like when it got around to acting in the proceeding.

12. The *NBMC* Court flatly rejected the assertion that this language constituted sufficient notice, pointing out that, under the Commission's theory of notice,

> an agency could simply propose a rule and state that it might change that rule without alerting any of the affected parties to the scope of the contemplated change, or its potential impact and rationale, or any other alternatives under consideration.

Id. The court obviously viewed such a proposition to be untenable. For the same reason, the self-servingly all-inclusive (and totally non-specific) language of Appendix 3(c) of the *NPRM* cannot be deemed to have provided the notice required by the APA. Therefore, the *MO&O*'s reliance on the Appendix 3(c) language is ineffective here.

B. *The Allotment Of Channel 292C3 To Beverly Hills Cannot Legitimately Be Characterized As A "Logical Outgrowth" Of The NPRM.*

13. Perhaps recognizing the thinness of the Appendix 3(c) reed on which it initially relies, the Bureau offers a second argument against Dickerson's assertion of lack of notice. According to the *MO&O*, the Commission is "not required by either [its] rules or the [APA] to issue a separate *Notice* for every channel under consideration", as long as the action ultimately taken is a "logical outgrowth" of the notice of proposed rule making. *MO&O* at 2, ¶4. The *MO&O* cites *Owensboro on the Air v. FCC*, 262 F.2d 702 (D.C. Cir. 1958) for this proposition.

14. But in *Owensboro*, the parties to the rule making had actual notice of precisely what the Commission intended to do, and had ample opportunity to comment on that proposal prior to its final adoption by the Commission. That is an immediate, and conclusive, distinction between that case and Dickerson's, since Dickerson had no notice until after the issuance of the *R&O* adopting a proposal which had not been referenced at all in the *NPRM*. Dickerson recognizes that the Commission may be under the assumption that *Owensboro* is not really an "actual notice" case, and that the lack of actual notice here does not (at least in the Commission's view) render *Owensboro* irrelevant. *See Pinewood, South Carolina*, 5 FCC Rcd 7609, 7611, n.4 (1990). But the Court itself has cited *Owensboro* as a case "upholding [agency] rules on the basis of the challengers' actual notice." *McLouth Steel Products Corp. v. Thomas*, 838 F.2d 1317, 1324 (D.C. Cir. 1988). The lack of actual

notice here, then, plainly renders *Owensboro* inapposite to Dickerson's case.

15. To be sure, *Owensboro* does refer to the general APA requirement that rule making notices contain "a description of the subjects and issues involved", *Owensboro*, 262 F.2d at 708, as the Commission's *Pinewood, South Carolina* footnote, *supra*, indicates. But that statement by the court was clearly not intended to be a definitive and detailed analysis of the APA notice requirement, particularly since no such analysis was required of the *Owensboro* court in light of the actual notice aspect on which that court focused. Indeed, the *Owensboro* court emphasized that its ruling was not at all intended to reflect "accept[ance of] a Commission's plan of convenience as a substitute for compliance" with the APA. *Owensboro*, 262 F.2d at 707.

16. More informative is the court's opinion in, *e.g.*, *NBMC*, where the court stated that the purpose of the statutory notice requirement is to assure that "persons are 'sufficiently alerted to likely alternatives' so that they know whether their interests are 'at stake.'" *NBMC*, 791 F.2d at 1023, quoting *Spartan Radiocasting Co. v. FCC*, 619 F.2d 314, 321 (4th Cir. 1980). This more recent interpretation of the APA's notice requirement -- an interpretation which is not mentioned in the *MO&O* -- properly emphasizes the need for rule making notices to alert potentially affected persons that they are, in fact, potentially affected persons, that they may indeed have interests at stake.

17. Viewed from this perspective, the *NPRM* below (and the Bureau's subsequent actions) clearly fall short of the statutory notice requirement. How could Dickerson have known that its interests were, or even might be, at stake from the *NPRM*? The only proposal mentioned there involved Channel 246, the proposed reclassification of which would not affect Dickerson in any way. It simply cannot be said that the *NPRM* "fairly apprised" Dickerson of what might be in store for it. Even if the Appendix 3(c) language is considered, the net effect of the *NPRM* was to advise the public that Channel 246 was to be reclassified, or maybe that the Commission would do something else involving FM channels in the Beverly Hills area -- exactly what the Commission might do, the public

was left to guess at. This is not consistent with the notice requirements of the APA, and the Bureau's action below must be reversed.

II. The Bureau's Failure To Apply Current Technical Standards To The Beverly Hills Allotment Is Arbitrary And Capricious.

18. In response to the foregoing, the Bureau (and, presumably, parties who support the decision below) will likely point to the November, 1992 public notice concerning the Sarasota/Gator counterproposal, in supposed demonstration that Dickerson should have been on notice of the possibility of the allotment of Channel 292C3 to Beverly Hills. But that notice doesn't support that position for several reasons.

19. First and most obvious, the November, 1992 public notice was not published in the Federal Register and did not reflect an actual proposal by the Commission. Rather, at most it reflected that some private parties had tendered a counterproposal. Even if Dickerson had received a copy of that notice -- and Dickerson has advised the Commission, in its Petition for Reconsideration below, that it did not learn anything about the possible Channel 293C3 allotment until after the issuance of the *R&O* -- that notice would not have constituted compliance with the APA notice requirement. *Cf., e.g., NBMC.*

20. But let's just say, purely for the sake of argument, that the November, 1992 notice ***was*** received by Dickerson and ***did*** inform Dickerson that, on October 30, 1992, a counterproposal to allot Channel 292C3 to Beverly Hills had been received by the Commission. Even that level of awareness would not have given Dickerson reasonable notice of what might be in store, for the notice did not even suggest, much less fully disclose, that that counterproposal would not be required to protect Station WEAG-FM as required by the rules in effect at the time that that counterproposal was filed. Even if Dickerson had known about the counterproposal, there was no reason at all for Dickerson to believe that its facilities were at risk in any way, because the rules -- rules which had been in place

for more than three years prior to the submission of the counterproposal -- protected Dickerson's facilities in a way which was satisfactory to Dickerson. [3/]

21. As it turned out, of course, the Bureau saw fit to waive those protection standards vis-à-vis Station WEAG-FM, without bothering to tell Dickerson beforehand. According to the Bureau, this is justified by the *Mileage Separation Order*, where the Commission stated that

> [a]pplications and petitions filed prior to October 2, 1989 must comply with, and will be processed in accordance with, the current rules [*i.e.*, the rules in effect prior to October 2, 1989].

Mileage Separation Order, 4 FCC Rcd at 6382, ¶57. The Bureau apparently reads the word "petitions" here to mean "any proposal filed at any time in any rule making proceeding as long as the original petition for rule making in that proceeding was filed prior to October 2, 1989". With all due respect, the Bureau's novel reading is clearly inconsistent with common sense, the APA, and the Communications Act.

22. First, the language on which the Bureau relies was plainly intended to be a grandfather provision applicable only to specific proposals in the pipeline as of October 2, 1989. Nothing in the *Mileage Separation Order* suggests that that provision was really intended to serve as a backdoor for parties to advance proposals in October, 1992 for consideration pursuant to standards which had been effectively removed from the books more than three years earlier. The *Mileage Separation Order* did ***not*** say, for instance, "all petitions filed prior to October 2, and all counterproposals thereto, whenever filed"; similarly, it did ***not*** say, "any and all proposals, whenever filed, submitted in response to or in connection with any petition filed prior to October 2, 1989". Rather, it limited the grandfather clause to "petitions filed prior to October 2, 1989".

23. Dickerson's reading of the *Mileage Separation Order* is supported by comparison of the

---

[3/] Indeed, for the record, Dickerson hereby advises the Commission and all parties hereto that, if Dickerson is assured the full measure of protection of the current mileage separations (as opposed to the mileage separations in effect prior to October 2, 1989), Dickerson will withdraw the instant application for review.

R&O, below, with the text of Section 73.213(c) which was adopted in the *Mileage Separation Order*. As it appeared in the 1989 *Mileage Separation Order*, that rule was applicable to "channel allotments made by order granting petitions to amend the Table of FM Allotments which were filed prior to October 2, 1989". 4 FCC Rcd at 6385. But review of the *R&O* below reveals no such "order granting" a pre-October 2, 1989 petition. For sure, the *R&O* ordered a number of channel modifications, but those modifications had been proposed in October, 1992. There is no way that those modifications could be construed as constituting a "grant" of Heart's original proposal, which was limited to reclassification of Channel 246 in Beverly Hills. Perhaps most conclusively, the *R&O* contains no "ordering" clause which expressly "grants" Heart's original petition.

24. The only reasonable reading of the *Mileage Separation Order* leads to the conclusion that the original Heart proposal -- to reclassify Channel 246A as Channel 246C3 -- was subject to the old rules, but all other proposals, counterproposals, etc. are subject to the rules in effect as of October 2, 1989. In particular, the Sarasota/Gator counterproposal was ***not*** set forth in a "petition filed prior to October 2, 1989", and therefore must be subject to the standards in effect as of October 30, 1992, *i.e.*, the date on which the counterproposal was filed.

25. In light of this, the November, 1992 notice concerning the Sarasota/Gator counterproposal could not reasonably be said to have provided Dickerson any notice concerning the fact that its interests might be at stake. As far as Dickerson knew, its facilities were subject to protection under the current (*i.e.*, post-October 2, 1989) standards, standards which were (and remain) satisfactory to Dickerson. How, based on the *NPRM* and the November, 1992 notice (assuming, *arguendo*, that Dickerson ever received that notice), could Dickerson have determined that those current standards might be deemed inapplicable and that, instead, standards which had been

superseded three years earlier would be revivified for the occasion? [4/]

26. This underscores the wholesale lack of proper notice to Dickerson in this proceeding. Again, the APA requires effective notice of what is likely to occur in a rule making proceeding. "Unfairness results unless persons are 'sufficiently alerted to likely alternatives' so that they know whether their interests are 'at stake.'" *NBMC*, 791 F.2d at 1023, quoting *Spartan Radiocasting Co. v. FCC*, 619 F.2d 314, 321 (4th Cir. 1980). Here, Dickerson was plainly not alerted to any "likely alternatives" by the *NPRM*, and even if any APA-related notice value might arguably be ascribed to the November, 1992 notice, that notice cannot be said to have been sufficient to alert Dickerson that its interests were at stake.

27. Finally, Dickerson notes that Section 316 of the Communications Act requires that, before a station's license may be modified, the licensee must be notified of the proposed modification (and the grounds therefor) in writing, and must also be given reasonable opportunity to protest the modification order. In Dickerson's view, grant of a proposal submitted in October, 1992, which would deprive Dickerson of protection afforded it by the Commission's rules since October, 1989, constitutes a modification of its license which required compliance with Section 316. The Bureau's failure to comply with that statutory mandate constitutes an independent basis on which to reverse the action below.

III. The Bureau Improperly Failed To Consider Dickerson's Substantive Arguments.

28. Dickerson notes that the Commission has historically seemed to treat the reconsideration process as a kind of safety net, allowing the Commission to address substantive arguments which were not submitted previously because of alleged lack of notice. *See, e.g., Medford and Grants*

[4/] In this regard the decision below was arbitrary and capricious. How, after all, can the Commission justify the application, in 1993, of 1989 standards to a 1992 proposal? The best the Bureau can say here is that the original Heart proposal was filed in 1989. But that is hardly an adequate justification.

Pass, Oregon, 45 R.R.2d 359, 362 (1979); *Pensacola, Florida*, 62 R.R.2d 535, 538 (1982). In its Petition for Reconsideration (which was prepared and filed by Dickerson acting *pro se*), Dickerson advanced several substantive arguments concerning the benefits which would be derived from various alternatives. *See, e.g.*, Dickerson Petition for Reconsideration at 9 (noting increases in population and areas served by no fewer than four separate six kilowatt upgrades which would be precluded by the allotment of Channel 292C3 to Beverly Hills).

29. In the *MO&O* the Bureau elected not to address the merits of the precluded upgrades as against the service increase from the Beverly Hills allotment. At a minimum, the Bureau should have undertaken such an analysis. After all, if the adoption of one allotment will preclude other upgrade opportunities, the Commission should thoroughly assess the potential benefits of all possibilities before adopting any one proposal. The Bureau failed to perform such an analysis in its *R&O* and in its *MO&O*. Accordingly, this proceeding should be remanded to the Bureau to permit it to undertake such an analysis.

CONCLUSION

30. Dickerson is not unsympathetic either to the parties to this proceeding, who are seeking to upgrade their facilities in various ways or to the Commission, which is faced with the task of allotting scarce channels in ways which will almost invariably leave one or more parties unhappy. But the fact of the matter is that the Commission is itself subject to rules and regulations in the way that it goes about its business. In this case, the Bureau has failed to comply with those rules and regulations. As inconvenient as it may be, the APA requires that parties which might be affected by rule making proceedings be given adequate notice of that fact. Here, that was not done. The Communications Act independently requires notice directly to a licensee whose license would be modified by some proposed Commission action. Here, that was not done. Additionally, the APA requires that the Commission not act in an arbitrary and capricious manner. Here, the Bureau

sought, in 1993, to apply to a proposal filed in 1992 standards which had, in effect, been written out of the rules in 1989. While such an approach may be convenient for the Bureau's purposes from time to time, it is a purely arbitrary approach which leads to arbitrary and capricious results inconsistent with the mandate of the APA.

WHEREFORE, for the reasons stated, Dickerson Broadcasting, Inc. submits that the channel allotments adopted by the Bureau in the above-captioned proceeding should be vacated and this matter should be remanded to the Bureau for further consideration consistent with governing statutory and regulatory standards.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W. - Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Dickerson Broadcasting, Inc.

January 7, 1994

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 7th day of January, 1994, I caused copies of the foregoing "Application for Review" to be placed in the U.S. Postal Service, first class postage prepaid, or hand delivered (as indicated below), addressed to the following persons:

Michael C. Ruger, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W. - Room 8318
Washington, D.C. 20554
(By Hand)

A. Wray Fitch, Esquire
Gammon & Grange, P.C.
8280 Greensboro Drive
7th Floor
McLean, Virginia 22102-2807
Counsel for Heart of Citrus, Inc.

David D. Oxenford, Jr., Esquire
Fisher, Wayland, Cooper & Leader
1255 - 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
Counsel for Gator Broadcasting Corporation

Michael H. Bader, Esquire
David G. O'Neil, Esquire
Haley, Bader & Potts
4350 N. Fairfax Drive
Suite 900
Arlington, Virginia 22203-1633
Counsel for Sarasota FM, Inc.

Dennis F. Begley, Esquire
Matthew H. McCormick, Esquire
Reddy, Begley & Martin
1001 22nd Street, N.W.
Suite 250
Washington, D.C. 20037
Counsel for Pasco Pinellas Broadcasting Co.

Peter Guttmann, Esquire
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
Counsel for White Construction Co., Inc.

John M. Spencer, Esquire
Leibowitz & Spencer
One Southeast Third Avenue
Suite 1450
Miami, Florida 33131
Counsel for Highland Media Company, Inc.

Irving Gastfreund, Esquire
Kaye, Scholer, Fierman, Hays & Handler
901 - 15th Street, N.W.
Suite 1100
Washington, D.C. 20005
Counsel for Roper Broadcasting, Inc.
and WGUL-FM, Inc.

/s/ Harry F. Cole
Harry F. Cole